

THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. XVII, No. 12

DECEMBER, 1946
COMPLETE NUMBER 331

PAGES 221-240

Published by

THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

Tax Trends in State Franchise Taxation—Domestic Corporations 223

Recent Decisions

Delaware—Quorum—by-law amendment by custom 224

—Voting trust—extension 225

Iowa—Dissolution—quo warranto suit 226

Maryland—Directors—purchase of stock 226

Minnesota—Income tax—interstate commerce 233

—Trust company—inspection of books 227

New Jersey—Compensation related to profits 228

New York—Delaware company—president-selection 232

—Stockholders' right to financial data 228

Ohio—Stock surrender as effecting dissolution 229

Oklahoma—Income tax—interstate commerce 234

Pennsylvania—Jurisdiction over foreign company 232

Appealed to The Supreme Court 236

Regulations and Rulings 237

Some Important Matters for December and January 238

Is yours a corporation with only
a few stockholders?

Probably, then, you have thought
a transfer agent would be too ex-
pensive for the transfers involved.
That was true once—but not
now. You can now have a transfer
agent at a cost, in dollars and
cents, LESS than doing the job
yourself!

Even if you haven't considered it
before, pick up your telephone—
there's a Corporation Trust office
handy—and listen!

CORPORATION TRUST
The
Corporation Trust
Company
CT
Corporation System
And Associated Companies

Albany 1.....	158 State Street
Atlanta 3.....57	Forsyth Street, N. W.
Baltimore 2.....	10 Light Street
Boston 9.....	10 Post Office Square
Buffalo 3.....	295 Main Street
Chicago 4....208	S. La Salle Street
Cincinnati 2.....	441 Vine Street
Cleveland 14.....	925 Euclid Avenue
Dallas 1.....	1309 Main Street
Detroit 26.....	719 Griswold Street
Dover, Del.....	30 Dover Green
Hartford 3.....	50 State Street
Jersey City 2.....15	Exchange Place
Los Angeles 13.....510	S. Spring Street
Minneapolis 1.....409	Second Avenue S.
New York 5.....	120 Broadway
Philadelphia 9.....123	S. Broad Street
Pittsburgh 22.....535	Smithfield Street
Portland, Me. 3.....57	Exchange Street
San Francisco 4.....220	Montgomery St.
Seattle 4.....	1004 Second Avenue
St. Louis 2.....	314 North Broadway
Washington 4.....1329	E. St. N. W.
Wilmington 99.....100	West 10th Street

Trends in State Franchise Taxation Domestic Corporations

The use of the "Massachusetts formula" in the allocation of franchise taxes imposed upon business corporations continues to find favor in an increasing number of states. This "formula" makes use of three factors in allocation: property, payroll and sales. It is now employed in connection with franchise taxes by California, Connecticut (as to income derived from the manufacture, sale or use of tangible personal or real property), Massachusetts (excise tax), Minnesota (manufacturing companies), Montana (corporation license tax), New Jersey, New York (as to business income), and Pennsylvania. New Jersey and New York have been the latest states to adopt this method of allocation. New Jersey has applied it as recently as January 1, 1946, when its franchise taxes on business corporations were replaced by a tax based on allocable net worth, using the formula in one of the alternative methods of allocation.

A number of states still allow domestic corporations no allocation in the determination of their franchise taxes. In this group are Alabama, Georgia, Kansas, Maryland and Nebraska. Louisiana in 1946 amended its franchise tax law to allow such an allocation of the base of the tax to its domestic companies.

States which continue to take the "authorized capital stock" of domestic corporations into consideration in determining the basis

of the franchise tax are Colorado, Delaware, Idaho, Maine, New Hampshire, Oregon, Rhode Island, Virginia, Washington and West Virginia.

Three states have followed the lead of Louisiana in employing a base broader than the customary "authorized capital stock" or "issued and outstanding capital stock." These states are Mississippi, North Carolina and Tennessee. Louisiana uses issued and outstanding capital stock, surplus, undivided profits and borrowed capital as the basis, while Mississippi, North Carolina and Tennessee employ the issued and outstanding capital stock, surplus and undivided profits. New Jersey makes use of an even broader base in employing "net worth" as the basis of its franchise tax, "net worth" consisting of issued and outstanding capital stock, paid-in or capital surplus, earned surplus and undivided profits, certain surplus reserves and the amount of all indebtedness owing to holders of 10% or more of the aggregate outstanding shares of all classes of stock.

A number of states today impose franchise taxes upon their domestic business corporations only. These are Delaware, Maine, Maryland, New Hampshire, Rhode Island and Virginia. States which impose no franchise tax upon either domestic or foreign corporations are Arizona, Indiana, Nevada, North Dakota, South Dakota and Wisconsin.

Domestic Corporations

Delaware.

Chancery Court rules by-laws of corporation had not been amended by custom so as to make four directors constitute a quorum of a board of ten members. Complainant corporation sought to have cancelled 75,000 shares of its stock issued to one of the defendants pursuant to authority allegedly given by resolution of the board passed at a meeting held on June 3, 1944. Complainant contended that no quorum was present at that meeting. At that time the by-laws provided that the number of directors should be ten and that a majority of the directors should constitute a quorum for the transaction of business and, further, that the number of directors should be fixed by the by-laws and was not to be altered except at a stockholders' meeting by a vote of the stockholders owning 75% of the shares entitled to vote thereon. No such formal alteration in the number of directors had been effected. Only four directors had been present at the meeting of June 3, 1944. The defendant to whom the stock was issued was a director who was present at the meeting. He contended that "by established practice to the contrary acquiesced in by the stockholders," the by-laws were amended so as to provide for only seven directors. The Court of Chancery, New Castle County, noted that *In re Ivey and Ellington, Inc.*, 42 A. 2d 508, (The Corporation Journal, October, 1945, page 6), it had recognized the principle of amendment of corporate by-laws by a course of conduct inconsistent therewith. "Clearly, however," observed the court, "one who contends that a written by-law has been amended by custom inconsistent therewith has the burden of establishing the existence of such a custom. Upon the undisputed facts, the defendant MacBean has failed to meet this burden, and it is not apparent that facts which would vary such a conclusion will be available to the defendant at the final hearing." The court emphasized that no meeting of either the stockholders or directors had been held between June 30, 1940 and June 3, 1944, and regarded this fact as "almost dispositive of defendant's contention." Claims of the defendant that the issuance of the stock was ratified in two ways (1) because authorized by directors owning more than a majority of the stock and (2) because it was purportedly ratified at a subsequent directors' meeting at which the minutes of the June 3, 1944 meeting were approved, but where no quorum was present, were regarded as untenable. The issuance of the stock being viewed as illegal, a preliminary injunction was ordered requiring the surrender of the 75,000 shares, awaiting a final determination of the defendant's rights. The defendant alleging that the shares in question had been disposed of, although the transferees had not requested transfers on the corporate books, the court questioned his good faith. Noting that he owned other stock or voting trust certificates representing stock of the corporation in excess of 75,000 shares, the court directed "that the preliminary injunction should be directed to operate upon a sufficient amount of the lawfully issued stock held by the

defendant MacBean to make certain that 75,000 shares will be available to be cancelled if, after final hearing, such a conclusion is justified." *Belle Isle Corporation v. MacBean et al.*, Court of Chancery, New Castle County, September 14, 1946. Leonard G. Hagner of Wilmington (Clinton DeWitt Van Siclen and Wilbur R. Shook of New York City, of counsel), for complainant. Stewart Lynch of Lynch & Hermann of Wilmington (Bacal & Koenig, of New York City, of counsel), for defendants. Commerce Clearing House Court Decisions Requisition No. 361486; 49 A. 2d 5.

Agreement providing for second extension of voting trust ruled invalid because not in compliance with statute, and also ruled ineffectual as a new voting trust. On January 22, 1929, a voting trust agreement was entered into which was to continue in effect for a period of ten years. Shortly before the expiration date in 1939, on December 15, 1938, the same parties executed an agreement entitled "Extension of Voting Trust Agreement" which sought to extend the period of the Agreement for five years, to January 22, 1944. Thereafter, by an agreement made as of May 27, 1939, the same parties executed an instrument, also entitled "Extension of Voting Trust Agreement," purporting to extend the previous agreements until January 22, 1949. The present controversies involved action taken by the stockholders and voting trustees in 1945 and 1946—subsequent to January 22, 1944, when the period fixed by the first extension agreement expired, since there was no controversy whatever concerning the original voting trust agreement or the extension thereof dated December 15, 1938. The Court of Chancery, New Castle County, in *Appon et al. v. Belle Isle Corporation et al.*, 46 A. 2d 749, (The Corporation Journal, June, 1946, page 164), ruled that the May 27, 1939, agreement did not comply with the provisions for extensions set forth in Section 18 of the General Corporation Law because it was not executed within the last year of the preceding agreement and held it invalid as an extension agreement, concluding also that it could not be regarded as constituting a new voting trust agreement. Upon appeal, the Supreme Court of Delaware has affirmed the judgment of the Court of Chancery. The higher court, in passing upon a second appeal which concerned the validity of an election of directors of the company which took place at a special annual meeting of stockholders on September 21, 1945, at which the voting trustees had cast the votes which determined the questioned election of directors, said: "Concluding as we have that the instrument of May 27, 1939 was invalid as an extension of the 1929 Voting Trust Agreement, and that it did not constitute a new or independent Voting Trust Agreement, certainly no election could be upheld where the determinative vote resulted from the votes cast by Voting Trustees acting in pursuance thereof." *Belle Isle Corporation et al. v. Corcoran et al.; Belle Isle Corporation et al. v. Appon et al.*, Supreme Court of Delaware, September 26, 1946. Leonard G. Hagner, for appellants. Stewart Lynch, for appellees. Commerce Clearing House Court Decisions Requisition No. 361747; 49 A. 2d 1.

Iowa.

Suit by stockholder on relation of state for dissolution of corporation held properly dismissed, inasmuch as statute provided exclusive action by attorney general for institution of such suits. This was an action in quo warranto seeking to oust defendants of their right to act as a corporation, praying for its dissolution and the appointment of trustees or a receiver to liquidate it. A county attorney, having refused upon the demand of a stockholder to commence and prosecute the action, application was made to the district court of Lee County, and leave to prosecute in the name of the State of Iowa was granted and a petition was filed. A motion of defendants for dismissal, made in the lower court, was sustained and the plaintiff appealed. The Supreme Court of Iowa, after an examination of the pertinent statutes and decisions, ruled that such a proceeding must be instituted by the attorney general, the statute indicating that such a manner of institution of the suit is exclusive, and that the rule laid down by the legislature precluded the institution of suit at the insistence of any private relator who may feel aggrieved at some action of the corporation and attempt to work a dissolution. The judgment for defendants was therefore affirmed. *State ex rel. Hutt v. Anthes Force Oiler Co. et al.*, 22 N. W. 2d 324. J. O. Boyd of Keokuk, for appellants. E. H. Pollard of Fort Madison, for appellees.

Maryland.

Purchase of stock of corporation by directors from stockholders, upheld. A Maryland corporation instituted suit against two of its directors for a decree declaring the rights, status and other legal relations between the defendants and the corporation, and seeking an injunction to restrain the defendants from assigning option for any stock purchased thereunder to any third person pending determination of the question presented by the bill of complaint. Two stockholders were permitted to intervene as parties plaintiff. "The first question that arises in this case," said the Court of Appeals of Maryland, "is whether a corporation can maintain a suit on behalf of stockholders who have been induced, through misrepresentation and fraud, to sell their stock to directors of the corporation who made the misrepresentation and practiced the fraud upon the stockholders, assuming that the bill correctly and specifically points out the matters constituting the misrepresentation and fraud." "The burden of the complaint in this case is that the defendants, as directors, obtained options to purchase stock from stockholders and as a result thereof damage accrued to the corporation and such stockholders. There is nothing illegal in a director buying stock from a stockholder. Of course, he cannot resort to misrepresentation and fraud in purchasing stock, just as a stranger to the corporation cannot resort to such methods. And unless there is a fiduciary relation existing between a director and an individual stockholder of a corporation, as contended by appellees, the matter is perfectly legal." The court concluded from the facts that there had been no intimidation of stockholders.

and that an allegation that the stockholders were damaged was without force, also, that there had been no fraud on the part of the directors which would vitiate their purchase of the stock, which, as individuals, they had the right to purchase. Further, that the corporation had no equitable interest in the shares of stock of a stockholder and that the corporation plaintiff could not maintain the bill, "even assuming that the defendants (directors) obtained options or purchased stock from shareholders by means of misrepresentation of material facts or failure to disclose same, for the reason that it has no interest in the matter. An action in deceit by the shareholder sustaining damage would accrue against a purchaser who was guilty of such conduct." *Llewellyn et al. v. Queen City Dairy, Inc., et al.*, 48 A. 2d 322. Thomas Lohr Richards of Cumberland and Horace P. Whitworth of Westernport, for appellants. D. Lindley Sloan and George Henderson (F. Brooke Whiting, on the brief) of Cumberland, for appellees.

Minnesota.

Stockholders of banks and trust companies ruled to have same right to inspect books and records of their companies as stockholders of other corporations have. Plaintiff corporation was the owner of about 18% of the stock of defendant trust company and sought by mandamus to compel defendant to permit it, as a stockholder, to examine defendant's books and records. In its answer defendant attempted to show by way of defense that the examination of its books and records was sought by plaintiff in bad faith and for wrongful purposes. Plaintiff demurred to the answer, which alleged plaintiff and its officers were "unfriendly" to defendant and its other stockholders and cited instances of plaintiff's actions to support the charge of lack of good faith. The demurrer to the answer was sustained and defendant appealed. The Supreme Court of Minnesota observed: "Here, as below, the questions for decision are whether a stockholder of a trust company is entitled to an inspection of its books and records, and, if so, whether the answer sufficiently alleges as a defense that the inspection was not sought in good faith but for wrongful purposes. Defendant contended, among other things, that the stockholders of a trust company have no right to inspect its books and records." The court traced the history of the right of the inspection of books and records by stockholders, finding it supported by both common law and statute and that no distinction was drawn which excluded banks and trust companies from the rule. On this point the court observed: "Our conclusion is that stockholders of banks and trust companies have a right to inspect their books and records the same as do stockholders of other corporations." The court, after examining the allegations of bad faith contained in the answer, found them insufficient as defensive matter or mere conclusions of law. The judgment of the lower court in favor of the plaintiff was, therefore, sustained. *State of Minnesota ex rel. E. M. Gustafson Company v. Crookston Trust Company et al.*, 22 N. W. 2d 911. Fowler, Youngquist, Furber, Taney & Johnson and Ralph H. Comaford of Minneapolis, for appellant.

Guesmer, Carson & MacGregor of Minneapolis and L. S. Miller of Crookston, for respondent. Commerce Clearing House Court Decisions Requisition No. 356384.

New Jersey.

Right of corporation to compensate its executives and employees by paying them a share of the corporate profits, upheld. Below is given the text of the syllabus of the Court of Chancery prepared in connection with its recent fifty-one page opinion in *Bookman et al. v. R. J. Reynolds Tobacco Co. et al.*, 48 A. 2d 646: "1. Where, at a stockholders' meeting, a by-law was unanimously adopted after notice of its provisions had been given, and no dissenting voice had been raised to its adoption, there is a presumption that those who did not appear or vote against the measure assented to the vote of the majority. 2. In the instant case, the defendant directors construed under the by-law and charter of the defendant company certain classes of common stock to be a new class of stock; held, their construction was correct. 3. A corporation may compensate its executives and employees by paying them a share of the corporate profits, thereby making their compensation contingent in whole or in part upon the success of the business. 4. Stock is property; and the provisions of our corporation act authorizing a corporation to 'hold, purchase and convey such real and personal estate as the purposes of the corporation shall require' empowers a corporation to purchase its own stock. 5. Where complainants and intervenors owned no stock in the defendant company when irregularities were allegedly practiced, they were bound by the notice to and knowledge of their predecessors in title and by the acquiescence of such predecessors of the same. 6. The rule in New Jersey is that a complainant who has acquiesced in the irregular transaction may not bring a derivative suit based thereon. 7. The defense of laches is an equitable defense, governed by the principles of equity, and depends upon the circumstances of each particular case. Where it would be unfair to permit a stale claim to be asserted, the doctrine applies. Where a gross fraud has been perpetrated, the court is hesitant to relieve the wrong doer on the ground of complainant's laches. In the instant case, held, there was no fraud and that complainants and intervenors are guilty of laches. 8. Chapter 131, P. L. 1945, N. J. S. A. 14:3-15 to 14:3-17, which bars suits or proceedings against corporations by stockholders who were not shareholders at the time of the transaction complained of, is held valid and binding."

New York.

Stockholders denied application for copies of income statements and balance sheets where statement of assets and liabilities had previously been furnished during the same year. Petitioners applied under Article 78, Civil Practice Act, for an order directing the respondent, as treasurer of petitioners' corporation, to furnish them copies of income statements and balance sheets of the corporation,

a previous application for similar relief, made under Section 77 of the Stock Corporation Law having been denied "without prejudice to such other proceedings as the petitioners may be advised to take." The application was renewed "on the basis of the stockholder's common law right to have the information concerning the income and balance sheet of the Corporation." The New York Supreme Court, Special Term, Queens County, Part I, noted petitioners' right under the common law, to inspection and examination of the corporate books at a proper time and place for a proper purpose and, in addition, the statutory right to inspect the stock books, subject to certain restrictions. "These rights," observed the court, "the respondent has freely allowed, but petitioners choose not to exercise them because of the alleged expense involved. Under Section 77 of the Stock Corporation Law, these petitioners are entitled to 'a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities,' but not more than once 'in any one year.' They have received such statement less than a year prior to the making of the present application, and the respondent is willing to furnish another such statement upon request when said year expires. They are not satisfied with such statement, and demand delivery of 'copies of income statements.' They are not entitled thereto, either under the common law or statute. The respondent has given and offers to continue to give to the petitioners all they are entitled to under the law." The application was accordingly denied. *Feinberg et al. v. Enselberg*, 63 N. Y. S. 2d 891. Turnbull & Bergh of New York City, for petitioners. Schlesinger & Krinsky of New York City, for respondent.

Ohio.

Surrender of stock by stockholders ruled not to effect a dissolution of company so as to prevent it from prosecuting suit. In a recently reported decision by the Court of Appeals of Ohio, Hamilton County, one of the questions raised concerned the right of an Ohio corporation, which had not been formally dissolved, to conduct litigation. It was contended that because its stockholders had surrendered their stock and thereby ceased to be stockholders, an integral part essential to corporate existence was removed and thereby a surrender of its corporate charter was effected and no action could be maintained and no such pre-existing legal entity could be the real party in interest in the suit. The court cited and quoted from Sections 8623-79 and 8623-80 of the General Code, related to the voluntary dissolution of a corporation, which continues a company, whose articles have been cancelled, "for the sole purpose of paying, satisfying and discharging any existing liabilities and obligations, collecting and distributing its assets and doing all other acts required to adjust, settle and wind up its business and affairs, and it may do all such acts and may sue and be sued in its corporate name." The court regarded an allegation by the defendant that it was not necessary or expedient that the corporation sue defendant in order to accomplish the purpose of winding up as a collateral attack upon a corporation having at least a de facto existence and that such a defense was not available to defendant. The

When the
Corporation Trust
system is representing
your client it means all
the bothersome details in filing
reports and paying taxes are
eliminated! A real help
to any busy
lawyer.

CORPORATION TRUST

The Corporation Trust Company CT Corporation System And Associated Companies

Albany 1.....	158 State Street	Jersey City 2.....	15 Exchange Place
Atlanta 3.....	57 Forsyth Street, N. W.	Los Angeles 13.....	510 S. Spring Street
Baltimore 2.....	10 Light Street	Minneapolis 1.....	409 Second Avenue S.
Boston 9.....	10 Post Office Square	New York 5.....	120 Broadway
Buffalo 3.....	295 Main Street	Philadelphia 9.....	123 S. Broad Street
Chicago 4.....	206 S. La Salle Street	Pittsburgh 22.....	535 Smithfield Street
Cincinnati 2.....	441 Vine Street	Portland, Me. 3.....	57 Exchange Street
Cleveland 14.....	925 Euclid Avenue	San Francisco 4.....	220 Montgomery St.
Dallas 1.....	1309 Main Street	Seattle 4.....	1004 Second Avenue
Detroit 26.....	719 Griswold Street	St. Louis 2.....	314 North Broadway
Dever, Del.....	50 Dover Green	Washington 4.....	1329 E. St. N. W.
Hartford 3.....	50 State Street	Wilmington 99.....	100 West 10th Street

fact that no certificate of dissolution had been filed was viewed as furnishing an additional reason for holding that the plaintiff corporation was still a juristic being with power to sue and capable of being the real party in interest under the statute. *H. S. Leyman Co. v. Piggly-Wiggly Corporation et al.*, 68 N. E. 2d 486. Peck, Shaffer & Williams, Ernst, Cassatt & Cottle and Charles W. Broeman of Cincinnati, for appellant. Nichols, Wood, Marx & Ginter and Harry Kasfie of Cincinnati, for appellees.

Foreign Corporations

New York.

Incorporators of Delaware company held to have no power to select its president. Plaintiff sought to recover salary due under a contract of employment by the defendant Delaware corporation, and for damages resulting from its breach. The United States District Court for the Southern District of New York had directed a verdict at the conclusion of the evidence because the plaintiff had failed to make out a cause of action. That was the only point involved upon appeal. The contract of employment had been entered into by the corporation's incorporators about four months before directors were first elected. Under it plaintiff was to become president of the company. He performed services for the company for about three months, when, a month before the directors were elected, he decided to "drop out". Plaintiff argued that the contract bound the defendant, regardless of ratification by the company's board of directors, on the theory that the incorporators, as such had power to commit the corporation. "That," remarked the United States Circuit Court of Appeals, Second Circuit, "is a question of Delaware law and, as we are not referred to any decisions of that state which touch upon the point, we are thrown back upon the statutes. The answer is clear: incorporators as such have no power to appoint a president and fix his salary before a board of directors is appointed." The court based its conclusion upon an analysis of the pertinent Delaware law as applied to the circumstances. After an exhaustive examination of the evidence, the court affirmed the judgment of the District Court, regarding plaintiff as having no claim against the defendant and the appeal as "totally without merit." *Kenyon v. Holbrook Microfilming Service, Inc.*, 155 F. 2d 913. Martin M. Kolbrener of New York City, for appellant. Reuben Golin and Hahn & Golin of New York City for appellee.

Pennsylvania.

Federal court retains jurisdiction of suit involving internal affairs of foreign corporation, pending determination of suit involving those internal affairs in court of company's home state. Plaintiffs, stockholders in defendant New Jersey corporation, were dissatisfied with the results of the annual meeting of the stockholders. Only the individual defendant and two other stockholders had appeared at the meeting, as originally called, their holdings equalling 50% of the

stock. The by-laws provided that no business might be transacted unless the majority of all stockholders were present. The meeting was adjourned for thirty days, upon notice and then adjourned to the date on which a vote was had for the election of directors. Plaintiffs sought to restrain the directors so elected from acting as such and to obtain a new election of directors under the supervision of the United States District Court, Middle District, Pennsylvania, where the action was brought, and to have a receiver pendente lite appointed in the interim. The court noted that it had jurisdiction to appoint a receiver for the defendant even though it was a New Jersey corporation, but that the question whether it would decline jurisdiction in a matter of this kind rested in its discretion, "Where, as here," said the court, "the reality of the situation shows that all the assets are located in Pennsylvania and the defendant company does almost entirely all of its business in Pennsylvania, such factors are persuasive against abandoning jurisdiction to the courts of the defendant's domicile for all purposes." The court noted, however, that the primary relief sought was a determination as to who were proper directors and whether the last stockholders' meeting was validly held. "These questions," continued the court, "are so manifestly concerned with the internal affairs of the defendant company that little room is left for argument. This court, like the state courts of Pennsylvania, does not exercise visitorial powers over foreign corporations under such circumstances." The court, while indicating the New Jersey state courts were to be used to test the legality of any particular meeting or the election of any board of directors, concluded not to dismiss the complaint, pending the result of proceedings in the New Jersey Supreme Court, after which, if that court determined the directors were not validly elected, a re-application for the appointment of a receiver to wind up the affairs of the company might be made, "if it later appears there is hopeless deadlock among the stockholders or there will exist a state of corporate paralysis because both factions of stockholders cannot agree who shall manage the business." *Aston et al. v. O'Carroll et al.*, 66 F. Supp. 585. J. Julius Levy of Scranton, Pa., for plaintiffs. W. J. Fitzgerald, J. Desmond Kennedy and Joseph P. Brennan of Scranton, Pa., and Milton, McNulty & Angelli of Jersey City, N. J., for defendants.

Taxation

Minnesota.

Minnesota Board of Tax Appeals rules state income tax applicable to unlicensed foreign corporation engaged solely in interstate commerce within Minnesota. The appellant Ohio company had, during the year in question, 1941, discontinued a warehouse stock which it had maintained in Minnesota and had surrendered its license to do business there. It continued, however, to maintain a branch office in the state, where the personnel consisted of a branch manager, three salesmen and four stenographers, the territory covered being Minnesota, North Dakota and portions of South Dakota, Montana and

Wisconsin. It was conceded that no intrastate business was done, but that taxpayer's business was wholly interstate. It appealed from an assessment by the Commissioner of Taxation contending that the inclusion in the apportionment formula of its earnings from interstate business violated both the commerce clause and the due process clause of the Federal Constitution. Section 3 of the Minnesota income tax law specifically imposes the tax upon domestic and foreign corporations, not otherwise taxable, which "own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both." The Board observed: "Here taxpayer both owns property within Minnesota and its business within Minnesota during the taxable year consists exclusively of interstate commerce. If the language of this statute does not evidence legislative intent to tax the within taxpayer it is meaningless." In considering the computation of the tax by the Commissioner in accordance with the three factor formula of property, payroll and sales, as provided in the statute, the Board concluded: "There could be no discrimination since the tax was computed in exactly the same way it would have been had taxpayer been a domestic or a foreign corporation subject to the provisions of Section 2 of the Act." That section imposes the income tax, as to foreign companies, "upon every foreign corporation except those included within Section 3, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form." The Board reached the conclusion that the tax levied by Minnesota, based on a fair apportionment formula, or net income resulting from the company's Minnesota activities, violated neither the commerce clause nor the due process provisions of the Fourteenth Amendment. *Owens-Illinois Glass Company v. The Commissioner of Taxation*,* Minnesota Board of Tax Appeals, Docket No. 196, September 24, 1946. Doherty, Rumble, Butler, Sullivan & Mitchell, for appellant. David W. Lewis, Assistant Attorney General, for appellee. (Petition for review by Minnesota Supreme Court pending.)

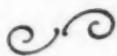
* The full text of this opinion is printed in the State Tax Reporter, Minnesota, page 1772.

Oklahoma.

Unlicensed foreign manufacturing corporation, effecting sales involving shipments in interstate commerce to independent dealers in state, ruled not subject to state income tax. A Delaware corporation, not licensed in Oklahoma, appealed from assessments of income tax for the years 1935 to 1939, inclusive, effected by the Oklahoma Tax Commission. The Corporation had protested the assessments, taking the position that none of the income sought to be taxed was taxable by Oklahoma. Its factories and its principal office were located outside of Oklahoma. It had no property, warehouse, place of business or employees there and its only business with respect to Oklahoma was the shipment into the state, in interstate commerce, of

motor vehicles and parts ordered by dealers and purchasers in Oklahoma, which orders were accepted in Detroit and filled by shipments from Michigan, Indiana or Ohio. The company owned the stock of three subsidiary sales corporations which were domesticated in Oklahoma, whose primary object was to promote sales for which they were compensated under contract with the Delaware company. The sales effected by these three companies in the years in question were, however, few in number and of such a nature that their taxability was not in question. The Delaware company's transactions, against which the disputed taxes had been levied, were made under contracts made directly with independent Oklahoma dealers in the name of the Delaware company, each for one of its "Divisions." The Oklahoma Supreme Court rejected the Commission's contention that each "Division" was one of the subsidiary corporations domesticated in Oklahoma. The court found that there was nothing in the contracts to contradict the idea that the contract entered into by one of the "Divisions" of Delaware company was other than a contract with the company itself. Finding no basis for the Commission's claim of taxability, the order appealed from was reversed, with directions to the Commission to vacate it and return to the company the taxes collected thereunder with interest, and to dismiss the proceeding. *Chrysler Corporation v. Oklahoma Tax Commission*,* Oklahoma Supreme Court, October 8, 1946. Richardson, Shartel, Cochran & Pruet of Oklahoma City, by D. A. Richardson and F. M. Dudley, for plaintiffs in error. Rathbone, Perry, Kelley and Drye, by Theodore Pearson of New York, N. Y.; E. L. Mitchell, W. F. Speakman and Harve L. Melton of Oklahoma City, for defendant in error. Commerce Clearing House Court Decisions Requisition No. 362139.

* The full text of this opinion is printed in the State Tax Reporter, Oklahoma, page 1774.



Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 46. *Richfield Oil Corporation v. State Board of Equalization*, 163 P. 2d 1. (The Corporation Journal, February, 1946, page 88.) Application of retail sales tax to sales of oil to foreign governments, delivered f. o. b. California port to buyer's tanker. Appeal filed, February 18, 1946. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 25, 1946. Argued, October 24, 1946.

INDIANA. Docket No. 3. *Hewit v. Freeman*, 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to nonresidents through brokers. Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945. On reargument, counsel requested to address themselves in their briefs and on oral argument to specified questions, October 8, 1945. Reargued, October 14, 1946.

NEW YORK. Docket Nos. 29-30. *Carter & Weeks Stevedoring Co. v. McGoldrick et al.; John T. Clark & Son v. McGoldrick et al.*, 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. Petition for certiorari filed, October 17, 1945. Certiorari granted, November 19, 1945. Argued, March 1, 1946. Restored to the docket and assigned for reargument before a full bench, April 22, 1946. Reargued, November 12, 1946.

OHIO. Docket No. 75. *International Harvester Company v. Evatt, Tax Commissioner of Ohio*, 64 N. E. 2d 53. (The Corporation Journal, February, 1946, page 92.) State taxation of foreign corporations—Ohio franchise tax measured by volume of business done in Ohio. Appeal filed, March 29, 1946. Probable jurisdiction noted, May 6, 1946.

* Data compiled from CCH U. S. Supreme Court Service 1946-1947.



Regulations and Rulings

CALIFORNIA—The State Board of Equalization has ruled that, for tax purposes, the effective date of the dissolution of a California company is the date on which it irrevocably loses its privilege of carrying on a corporate business. As an illustration, the Board indicated that a corporation which filed its certificate of election to wind up its affairs and dissolve in January, 1941, and, in the same month, executed a bill of sale transferring all of its assets, could not be held taxable for the period intervening between January and August when it filed its certificate of dissolution. (California State Tax Reporter, ¶ 8-944; formerly known as The Corporation Tax Service.)

KANSAS—The Retailers' Sales Tax Regulations and Rulings and the Compensating Tax Rulings have recently been revised by the State Commission of Revenue and Taxation.

MISSOURI—A corporation which either employs all its property and outstanding shares in the state, or which will return for franchise taxation all its outstanding shares without regard to whether or not they are wholly employed in the state, need not answer the allocation questions in Items 12 and 13 of the Franchise Report form. In order that the value of the no par value shares may be determined, however, it is necessary that the valuation data in Items 14 and 15 be furnished. (Opinion of the Attorney General to the State Tax Commission, Missouri State Tax Reporter ¶ 5-004.)

NORTH CAROLINA—Prefabricated homes are tangible personal property and as such are subject to the sales tax. They are not within the exemption of rough and dressed lumber. The 3% tax must be paid on each section of the house and the maximum of \$15 is not applicable to the completed house. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 64-013.)

NORTH DAKOTA—The Attorney General of North Dakota has ruled that a foreign corporation need not qualify under the foreign corporation statutes where it filed an application with the Securities Commission for a license to sell its common stock and the stock was sold to an investment dealer acting as underwriter, where the underwriter was to form an underwriting group of resident licensed dealers for offering the stock for sale to the public. (Opinion of the Attorney General to Secretary, Securities Commission, State Tax Reporter, North Dakota, ¶ 4-000.)

OHIO—There is no authority to grant sales tax refunds where claims are not filed within the prescribed statutory period. The state is not estopped by a failure of its agent to supply application blanks as promised, since there is no obligation to furnish the blanks in such manner or authority on the part of the agent to bind the state. (Opinion of Ohio Board of Tax Appeals, State Tax Reporter, Ohio, ¶ 69-041.)

Some Important Matters for • December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Income Tax due before January 1.—Domestic and Foreign Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

INDIANA—Annual Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

KENTUCKY—Return of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due February 1.—Domestic Corporations.

MISSOURI—Annual Franchise Tax due on or before December 31.—Domestic and Foreign Corporations.

OHIO—Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations.

Retail Sales Tax Returns due on or before January 31.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Statement due January 31.—Foreign Corporations.

SOUTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

WISCONSIN—Privilege Dividend Tax. Return due on or before January 31.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

What! We Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

What Constitutes Doing Business. (Revised to June 1, 1946.) A 191-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside state and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employee suddenly found themselves in trouble.

Judgment by Default. Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employees as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
120 BROADWAY, NEW YORK 5, N.Y.



POSTMASTER—If undeliverable FOR ANY REASON, notify sender, stating reason (and new address, if known, if addressee has moved) on **FORM 3547** postage for which is guaranteed.

THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

